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In the Supreme Court of the United States

October Term, 1973
No. 73-286

JOHN REESE,
Petitioner

vs.

JACOB G. KASSAB, Secretary of the Department of Transportation of Pennsylvania, and JULIUS A. TROMBETTA, Director of the Bureau of Traffic Safety of Pennsylvania,
Respondents

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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COUNTER-STATEMENT RE JURISDICTION

Petitioner alleges that the jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) (3) whereas jurisdiction is actually invoked under 28 U.S.C. §1254(1) and not §1254(3).

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. The District Court did not err in not relieving Appellant from being required to submit to an administrative hearing prior to suspension under the Pennsylvania Point System Statute on the basis of his existing driver's record.

2. The District Court did not err in denying Appellant's motions under Rules 62(b) and 60(b) of the Federal Rules of Civil Procedure and in not relieving Appellant from having to submit to an administrative hearing.

3. The Court of Appeals did not err in dismissing Appellant's appeal on the basis that Appellant's Rule 62 (b) motion was not a final order and therefore not appealable and that the denial of the Rule 60(b) motion by a single judge of the District Court was not reviewable by it and in ruling the matter was moot, because an administrative hearing had been afforded and given to Appellant.

COUNTER-STATEMENT OF THE CASE

The Appellant, John Reese, after exhausting his State remedies in the Pennsylvania Courts, i.e., the Court of Common Pleas of Washington County, the Superior Court and the Supreme Court of Pennsylvania, filed a complaint in the District Court for the Western District of Pennsylvania, attacking the constitutionality of the Pennsylvania Point System Law on the basis that no pre-suspension hearing was afforded him as required by this Honorable Court in the *Bell v. Burson* decision, 402 U.S. 535, 91 U. S. Supreme Court 1586, 29 L. Ed. 2d 90 (1971).

The said District Court did not declare the Pennsylvania Point System Law per se unconstitutional but held that before an operator's license can be suspended by the secretary under the terms of the Pennsylvania Point System, there must be notice and opportunity for a hearing before the action becomes effective (Appellant's App. D., p. 12a). The Court issued an order dated October 26, 1961 (Appellant's App. D., pp. 14a-15a) in favor of the Appellant and against the Respondents herein *permanently* enjoining them from suspending Appellant's operator's license, *unless* after an administrative hearing is granted in accordance with the opinion of this Court, it be shown that there is sufficient reason for said suspension.

In full compliance with the District Court's order and opinion, the Respondents notified the Appellant of the administrative hearing prior to suspension, whereupon the Appellant filed his motions under Rule 60(b) and 62(b) which were denied by the Honorable Louis Rosenberg,

alone, on April 11, 1972. The Appellant then filed his appeal to the Court of Appeals for the Third Circuit from said denial of his motions and on May 16, 1973, based on the briefs submitted by the parties and without oral argument, Appellant's appeal was dismissed (Appellant's App. A, p. 2a). Whereupon Appellant filed his petition for writ of certiorari to this Honorable Court.

REASONS FOR *NOT* GRANTING THE WRIT

1. The District Court did not err in not relieving Appellant from being required to submit to an administrative hearing prior to suspension under the Pennsylvania Point System Statute on the basis of his existing driver's record.

(a) The District Court did not decide an important State question in conflict with applicable State law.

(i) The action of the Secretary of Transportation and Director of the Bureau of Traffic Safety, respondents herein, were reviewed on appeal by the Court of Common Pleas of Washington County, Pennsylvania, on at least two separate occasions and then by the Superior Court of Pennsylvania and in all instances the regularity and propriety of such actions by Respondents were affirmed by said courts; see *Reese Motor Vehicle Operator License Case,* 218 Pa. Superior Ct. 746, 272 A. 2d 516 (1970). The Supreme Court of Pennsylvania denied Appellant's petition for Allocatur.

The only issue in Appellant's appeal to the District Court for the Western District of Pennsylvania concerned the constitutionality of the Pennsylvania Point System Law. The said District Court did not declare the Pennsylvania Point System Law per se unconstitutional but merely held that before an operator's license could be suspended by the Commonwealth the licensee must be first afforded notice and opportunity for an administrative hearing prior to the suspension becoming effective. See

Reese v. Kassab et al., 334 F. Supp. 744 at 747 (1971) (Appellant's App. D, p. 6a).

To date, the Appellant has not served one day of the sixty (60) day suspension mandated by the Pennsylvania Point System Law.

Accordingly, the Respondents aver and maintain that Appellant's allegations and arguments hereunder are clearly improper, are without merit and are not germane to the issues presented in these proceedings to this Honorable Court.

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2. The Courts below did not err in denying Appellant's motions and in not relieving Appellant from having to submit to the administrative hearing held on April 12, 1972.

(a) The Courts below did not overlook nor misapply binding decisions of this Court concerning the type of hearing to be given licensee before suspension of his license.

(i) and (ii) In *Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971), the Court said at page 96 (29 L. Ed. 2d 96): "The hearing required by the Due Process Clause must be 'meaningful', Armstrong v. Manzo, 380 U.S. 545, 552 (1965) and 'appropriate to the nature of the case.' *Mullane v. Central Hanover Bank & Trust Co.* (supra). It is a proposition which hardly seems to need explication *that a hearing which excludes consideration of an element essential to the decision* whether the licenses of the nature here involved shall be suspended does not meet this standard." (Emphasis supplied.) The Court further said at page 96 "while 'many contro-

versies have raged about . . . the Due Process Clause,' *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, at 313, it is fundamental that except in emergency cases (and this is not one) *due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective.*"

The records of the State Courts and that of the District Court for the Western District of Pennsylvania clearly show that Appellant was afforded the due process to which he is and was entitled.

In the *Virnelson* case, 212 Pa. Superior Ct. 359, 243 A. 2d 464 (1968), the Superior Court stated that ". . . [a]t the hearing before the lower court the Commonwealth should produce the records of convictions received . . . from the magistrates and courts of record in the proper form and the secretary's record compiled therefrom which justified the suspension. If these documents showed that the suspension was given in accordance with the mandate of Section 619.1 [of the Vehicle Code, Point system law], the Commonwealth had produced a prima facie case for suspension. . . ." The Court further stated on page 368 of said opinion: "If the defendant wishes he may then proceed to show he was not convicted or that the records or computations of the secretary are incorrect." The Courts of Pennsylvania clearly found that the decision of the *Virnelson* case, supra, had been complied with by the Respondents herein and dismissed the appeal of the Appellant.

Appellant then alleges in Reason No. 2 for Granting Writ that "The Statutory Court has *permanently* enjoined

Appellees (Respondents herein) from suspending Appellant's driver's license under the Pennsylvania Point System statute *'unless* after an administrative hearing is granted in accordance with the opinion of this Court, it be shown that there is sufficient reason for said suspension.' "

Based on said holding by the District Court below, Respondents afforded the Appellant notice and opportunity for an administrative hearing; the hearing was held and was attended by Appellant, his counsel and their stenographer. Since by Appellant's own admissions in the State Courts and in the District Court below that he had paid the fine and costs on all the offenses charged and that he had not appealed any of these convictions as provided by law and consequently the action of the Respondents thereon were held proper by the said State Courts, the administrative hearing granted Appellant of necessity showed that there was sufficient reason for said suspension to be imposed. A notice of suspension was therefore properly sent to the Appellant advising him that his operating privileges would be suspended for sixty (60) days, effective July 10, 1973, as mandated by the Point System Law. On Appellant's petition for a writ of certiorari to this Honorable Court, the aforesaid suspension was rescinded pending this Court's action on this petition.

(iii) The Appellant alleges that a distinction should not be made between pre-suspension hearings in financial responsibility cases and in hearings before suspension of licenses under the Pennsylvania Point System Law (75 P.S. 619.1) i.e. that both type hearings should be adversary hearings.

The Respondents aver that such procedure would be contrary to law in that an adversary hearing is a necessity

in a financial responsibility case in that there must be a determination of fault and the review of such cases on appeal is de novo whereas the point system law has mandatory provisions under which the secretary does not exercise any discretion since his actions are based on convictions and on review the licensee may only show that he was not convicted and not that he should not have been convicted and that the computation of the points was not proper. He cannot collaterally attack the criminal convictions in a suspension appeal since suspension appeals are civil in nature and not criminal. See *Commonwealth v. Halteman,* 192 Pa. Superior Ct. 379, 162 A. 2d 251 (1960); *Preston Motor Vehicle Operator License Case,* 216 Pa. Superior Ct. 415 (1970). As this Honorable Court stated in *Bell v. Burson,* supra, the (administrative) hearing must be *appropriate* to the nature of the case. The Appellant offered no evidence or testimony whatever at the departmental hearing held on April 12, 1972 that (1) he was not the person convicted of the three offenses charged nor (2) that the points as to said convictions were improperly assigned or erroneously computed.

The Respondents further aver and contend that Appellant's arguments throughout his petition wherein it is alleged that the court below declared Appellant's second conviction of violating Section 1028(a) of the Vehicle Code invalid is without merit and this contention is supported by Judge Rosenberg's statements contained in page 214 of the Joint Appendix Vol. II wherein the Court below said: *"We did not rule on any merits nor any factual situations.* All we ruled upon was merely an admission by the Commonwealth of Pennsylvania that there had been no hearing provided and that the suspension had occurred

previous—prior to the actual hearing, which ordinarily, or customarily, was permitted, and we agreed that the hearing should be granted before the suspension. *That is all we ruled."* (Emphasis ours.)

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3. Under the circumstances of the case, the Court of Appeals did not err in denying Appellant's Rule 62(b) motion and Rule 60(b) motion and in ruling the matter was moot because an administrative hearing had been given the Appellant.

Respondents aver and contend that the Court of Appeals properly denied Appellant's motions under Rules 60(b) and 62(b) of the Federal Rules of Civil Procedure in that had the said Court granted same it would have created a situation which would have been in direct opposition to Appellant's reasons for originally taking an appeal to the District Court, i.e. to afford Appellant his constitutional right of notice and opportunity to an administrative hearing prior to the suspension of license becoming actually in effect. Accordingly, the Appellant has not presented a substantial federal question to this Court since the federal question at issue before the District Court is now moot as the Respondents have afforded Appellant proper notice and opportunity for an administrative hearing and an administrative hearing prior to suspension has been held.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should not be granted under the circumstances of this case.

Respectfully submitted,

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